

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KEVIN SMITH,) CASE NO. 4:19-CV-2132
)
Petitioner,)
) JUDGE DAN AARON POLSTER
v.)
)
MARK WILLIAMS,) <u>ORDER & OPINION</u>
)
Respondent.)

Before the Court is Petitioner Kevin Smith's Motion to Dismiss Petition for Habeas Corpus Relief, **Doc #:** 6. For the reasons stated below, Smith's Motion is **Granted**.

Smith filed a petition under 28 U.S.C. § 2241 asserting that his release date should be recalculated under the First Step Act of 2018. Doc #: 1. Respondent Mark Williams filed a Motion to Dismiss Habeas Corpus Petition in which he argued that Smith already received a recalculated release date. Doc #: 4 at 3. Smith now requests that the Court dismiss his petition for Habeas Corpus because he has received a recalculated release date. Doc #: 6. Accordingly, the Court grants Smith's Motion to Dismiss Petition for Habeas Corpus Relief.

Smith also requests that the Court recommend the Bureau of Prisons adjust his halfway house release date. Doc #: 6. Smith contends that prior to the Bureau of Prisons adjusting Smith's release date, the Bureau approved Smith for a 12-month term at a halfway house to begin in January of 2020. *Id.* While the Bureau of Prisons has since adjusted Smith's release date, it has not adjusted Smith's release date to the halfway house. *Id.* The Second Chance Act

directs the Bureau of Prisons to consider placing an inmate in a halfway house by considering the factors in 18 U.S.C. 3621(b). *Lovett v. Hogsten*, 2009 U.S. App. LEXIS 28957, *4 (6th Cir.).

Included in these factors is bed availability. 18 U.S.C. § 3621(b). If the Bureau of Prisons has already approved Smith for a 12-month term at a halfway house, the Court recommends the Bureau of Prisons adjust his release date to a halfway house subject to bed availability.

For the above reasons, Smith's Motion to Dismiss Petition for Habeas Corpus Relief, **Doc #: 6**, is **Granted**. Smith's Petition for Habeas Corpus, **Doc #: 1**, and Respondent's Motion to Dismiss Habeas Corpus Petition, **Doc #: 4**, are **DENIED AS MOOT**.

IT IS SO ORDERED.

/s/Dan Aaron Polster October 23, 2019
DAN AARON POLSTER
UNITED STATES DISTRICT COURT